IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2227 OF 2007

Sunil Sakhawatrai Sadhwani] .. Petitioner

Versus

Bharat Sanchar Nigam Limited] .. Respondents

Mr. Vaibhav J. Mehta for the petitioner.

Mr. Viral D. Shukla i/b M/s. Shukla & Associates for the respondents.

CORAL: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 02ND AUGUST, 2007

P.C. :

1. Rule. Returnable forthwith. By consent, called Writ Petition for hearing. Heard counsel.

2. By this Petition the petitioner challenges the communication/order dated 23rd January, 2007 by which the petitioner-firm was blacklisted and prohibited from submitting any tender and/or entering into any contract with the respondent, a Government of India Undertaking, for a period of three years.

3. A show cause notice was issued to the petitioner on 5th January, 2007, which states: "It was found by the Committee that in your Bill No.D-95 dated 20th October, 2005, number of joints claimed by you in respect of the cable fault was 103 instead of actual number 11 and the soil strata claimed was rocky instead of soft soil." On this count the petitioner was sought to be blacklisted. It is the case of the respondent that the petitioner had billed for doing work on 103 joints though he had actually done the work on only 11 joints. It is further a case of the respondent that the petitioner had claimed higher rate of work on the ground that the soil surface was rocky though it was soft soil surface and thereby the petitioner had made false claim in the bills and had made wrongful gain for himself. By a reply dated 13th January, 2007, the petitioner showed cause in part and asked for time for further reply. On 23rd January, 2007, the impugned order was passed blacklisting the petitioner.

4. We have perused the order of blacklisting. It is not a speaking order. It only states that the reply of the petitioner was not found to be satisfactory and, therefore, the same was not accepted. In view of the fact that the order is not a speaking order it is not

possible to know whether the representations made by the petitioner were considered.

5. There is yet another clear lacuna which was disclosed in the arguments of the learned counsel for the respondent. Learned counsel for the respondent submitted that in the routine vigilance inspection discrepancy in respect of Bill No.D-95 dated 20th October, 2005, was noticed. Thereafter further investigations were carried out in which 82 cases of excess billing/wrong billing made by the petitioner were discovered. Several officials of the BSNL were also involved in the lumpscale malpractice of the petitioner. Departmental action has been initiated against several officers of the respondent right from the lowest cadre upto the level of very senior officers. Large scale of over-billing was made by the petitioner causing wrongful loss to the respondent probably with the connivance of some of the officers of the respondent. Perusal of the show cause notice dated 5th January, 2007, shows that these facts are not mentioned in the show cause notice at all. The show cause notice was only in respect of one Bill No.D-95 dated 29th October, 2005. If the real reason for taking action of blacklisting against the petitioner is the alleged large scale fraud committed by him in respect of 82 other bills, it was necessary for

the respondent to issue show cause notice to the petitioner in respect of those bills also and give an opportunity to him to show cause against the proposed action. Since this was not done and the action has been taken not only in respect of Bill No.D-95, but in respect of 82 other bills for which even an opportunity to show cause was not given to the petitioner, the order needs to be quashed.

6. Accordingly, we allow the Writ Petition. The impugned communication dated 23rd January, 2007, is hereby quashed and set aside. We make it clear that this would not prevent the respondent from issuing a fresh show cause notice to the petitioner in respect of the alleged fraud and for taking action in accordance with law.

7. As regards the reliefs claimed in prayer clauses (b) and (c) of the Writ Petition, the reliefs relate to recovery of the amount under the bills. Since these are monetary claims which involve disputed question of facts, we decline to consider those claims granting petitioner the liberty to take appropriate legal action in respect of prayers contained in clauses (b) and (c).

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]